DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 25	)	
of the Cable Television Consumer	)	MM Docket 93-25
Protection and Competition Act	)	
of 1992	)	
	)	
Direct Broadcast Satellite	)	
Public Service Obligations	)	

REPLY COMMENTS OF THE SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION OF AMERICA

Andrew R. Paul
Senior Vice President
Government Affairs
Satellite Broadcasting and
Communications Association
225 Reinekers Lane, Ste. 600
Alexandria, VA 22314

July 9, 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 25	)	
of the Cable Television Consumer	)	MM Docket 93-25
Protection and Competition Act	)	
of 1992	)	
	)	
Direct Broadcast Satellite	)	
Public Service Obligations	)	

REPLY COMMENTS OF THE SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION OF AMERICA

I. SUMMARY

The Satellite Broadcasting and Communications Association of America (SBCA) submitted extensive comments to the Commission in the above-referenced proceeding and is now pleased to provide the following reply comments regarding the public service obligations of Direct Broadcast Satellite services.

We stated in our original comments that the DBS providers subject to this proceeding are either in a nascent stage or about to go on line in early 1994. As a consequence, a major thrust of our comments concerned the yet to be determined operational format of these services thus reinforcing their need to be able to conduct their businesses in a flexible manner. This would enable them to develop and enhance their market place

position, while at the same time observing the public service requirements set out for them in the 1992 Cable Act. We urge the Commission to utilize this proceeding to foster a climate which will assist both DBS providers and public service programmers to integrate into a competitive video delivery model.

We cannot emphasize too strongly the importance of sufficient operating latitude in order for DBS services to achieve the competitive parity with other multichannel video providers which the authors of the Cable Act envisioned. Such flexibility is entirely consistent with the public service requirements which were mandated by the Act and are now being implemented by the Commission. It is our hope that the educational and noncommercial program services which will have access to and benefit from national DBS distribution will approach these obligations as "partners" with DBS providers, thus enriching the program offerings which will be available to DBS households around the country. So it is in that spirit that both SBCA's comments and reply comments in this proceeding are being delivered.

It is clear from the comments submitted by a number of the noncommercial program services that there may be certain basic misunderstandings concerning the nature of the DBS business. We will attempt to rectify those misperceptions here while addressing other important matters affecting DBS providers which the FCC should take into account as it formulates its rules.

II. ADDRESSABILITY DOES NOT CONSTITUTE LOCALISM

It is important that we distinguish for certain commenting parties what is true localism in the context of television broadcasting, as compared to the technological feasibility of addressability in the satellite industry. They are not the same, notwithstanding the desire by certain commenting parties to impose a regime of localism on DBS providers. As we described in our original comments in this proceeding, the principal, overarching feature of a DBS system is its superior efficiency and cost effectiveness in delivering programming point to multi-point on a national basis. (In fact, many of the features of the vaunted "information superhighway" will soon be available via satellite, if not already.) Shackling this technology within the confines of the traditional view of localism would stifle an important, telecommunications resource which promises to add a new dimension of national competition to the video delivery market place -- a major Congressional objective in the 1992 Cable Act.

Attempting to select a particular community for local access programming on a DBS system would entail blacking out that channel for all other areas of the U.S. (or forcing the rest of the country to watch a program of little or no interest). In either case, that broadcast would be a waste of spectrum envisioned for national rather than local use. So the penalty for local carriage is a loss of national delivery capability -- hardly an efficient use of the scarce spectrum space allocated for high-powered DBS delivery systems. This is a high price to pay, given the enormous cost to develop and construct

such innovative technology and would constitute a gross misuse of the system. Furthermore, it would hobble a DBS provider's need for flexibility in the configuration and operation of service, particularly in the start-up phase of the business.

In that regard, we would suggest that there are other technologies such as cable and over-the-air broadcasting which are far more efficient in their ability to serve a local market, and in many respects that is the very capacity on which their creation and empowerment has been based. Furthermore, DBS may one day be able to offer local programming through the development of satellite especially configured for small radius or "spot beam" broadcasting. Systems are already on the drawing board which would provide ADI coverage for local broadcasters using the "spot beam" concept. That such systems are being planned is an indication of differences in configuration between a regional, ADI-based system and the current DBS providers.

It is important that the Commission reinforce the national competitive character of DBS for the reasons we have enumerated. Any comments in this proceeding which would attempt to impose a regime of localism on DBS providers are wide of the mark. Frankly, they not only do not do justice to the innovation and competition that DBS providers will bring to the market place, they also show a lack of understanding as to the exact nature and configuration of a DBS satellite system. We make this statement with utmost respect to our colleagues in local and state government and reassure them that regardless of the format which DBS providers elect to satisfy their public service

obligations, those obligations will be fulfilled as called for by the Act.

III. ACCESS TO PUBLIC SERVICE TIME

We believe that the language dealing with the public service obligation in Section 25 of the Act was designed by the Congress to recognize the flexible nature and operating characteristics of DBS as a multichannel video competitor. In terms of access to DBS systems by both political entities and noncommercial and educational programmers, that language neither characterizes DBS as a "broadcaster" or a "cable operator" in the traditional sense of their meanings, but creates access to channels and time on a basis which consistent with the unique operating characteristics of DBS.

For example, Section 25 specifically refers to "the access to broadcast time requirements of section 312(a)(7) and the use of facilities requirements of section 315" as they should apply to DBS providers. Clearly Congress attributed some broadcast characteristics to DBS by imposing broadcast access requirements. By the same token, neither does Section 25 make any reference to leased commercial access as it does for cable operators, although a DBS system will typically comprise a multiple channel format. Thus DBS providers should and must have the right to exercise discretion in the framework and implementation of their obligations in this proceeding, given the mix which the Act mandates between political access (as a broadcaster) and noncommercial programmers (as a multichannel video provider). We believe, in fact, that there can be

no other interpretation.

A DBS provider is well positioned to use time reserved for public service broadcasting because of the DBS operating format. We reiterate that scarcity of spectrum, as well as the high cost of transponder space, is a significant undercurrent in this proceeding.

of digital DBS systems and forge strategic relationships with DBS providers so as to maximize their ability to reach critical audiences.

IV. DEFINITIONS

We remain concerned over the definitional requirements which might grant access to a DBS system by a particular public service programmer over another. There are "other" program services which, while technically are for-profit entities, nonetheless play a significant role in providing valuable noncommercial informational or educational programming to the public. They should not be arbitrarily locked out of access as public service providers simply because they do not meet the Section 397 definition. Nor does it serve to enter into a prolonged debate over what constitutes a "noncommercial programmer of an educational or informational nature."

Simple good sense dictates that there are a variety of program services available which, whether or not they meet a specific definition, offer the public valuable educational or informational services and constitute "public service" by virtue of the content of the programming. Furthermore, it will be critical to the competitive development of a viable DBS system to achieve the proper mix of programming which can set the service apart from other multichannel delivery systems. For example, public television licensees and the Corporation for Public Broadcasting are well known nationally for the high caliber of public service programming which they engender. By the same token,

other high quality information and educational programming is also available from such services as C-Span, The Learning Channel, Mind Extension University and Channel One, even though they may not be truly "noncommercial" services. The selection of public service programmers will be an important component in determining the success of a DBS program menu. This is our overriding motivation in seeing those programmers establish working relationships with DBS providers. It is also primordial to the ability of DBS providers to select services from as wide a variety as possible.

Once again, the consumer will be best served by allowing DBS providers to formulate the best line-up of public service programmers in view of the audience base they are trying to attract. It would be a shame to impose public service obligation rules which served to restrict DBS providers to a pre-determined regime rather than to allow flexibility and choice in the selection of such a key programming component.

V. RATES

Some public service advocates would require that DBS providers give up to 5% of their revenues to local programming entities in support of their local broadcast activities. We would reject out of hand any demands for compensation of this type. In the first place, DBS providers, by law, will be required to make 4 to 7% of their channel assets

operating the DBS system. In our view, this is a generous subsidy in its own right. Making any additional demands is going too far, in view of the requirements already mandated by Section 25 of the Act. We don't believe such demands are in the spirit of what is contemplated under the Act, and we strongly urge the Commission to recognize the benefits to public service programmers which the Act has already bestowed.

VI. CONCLUSION

The most important aspect of this rulemaking is for the Commission to create an environment of mutual competitive benefit for both DBS providers and public service programmers while at the same time satisfying the public service obligations of Section 25 of the Act. We believe this can be accomplished in a highly successful fashion by giving DBS providers sufficient flexibility to position public service programmers into program packages which can offer the greatest appeal to consumers. It is our hope that public service programmers also have a similar goal and will want to seize on the opportunity to become integrated into the larger programming efforts of this superb new technology which promises to bring even more high quality programming choices to the American viewing public.

Andrew R. Paul
Senior Vice President
Satellite Broadcasting and
Communications Association of America

July 9, 1993